
HOUSE BILL No. 1837

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.3; IC 6-2.5-4; IC 6-2.5-5-39.

Synopsis: Utility receipts and gross retail sales taxes. Exempts receipts from penalties, shutoff fees, reconnect fees, hydrant rental fees, and certain solid waste collection and disposal services from the utility receipts tax. Exempts receipts from shelter house, hydrant, and golf cart rentals from the gross retail and use tax (sales tax). Changes the basis for determining the amount of utility receipts taxes that must be deposited on a quarterly basis from 25% of the estimated liability for the taxable year to 100% of the liability incurred for gross receipts received in a quarterly reporting period. Changes the filing date for quarterly returns from the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year to the twentieth day of the month following the third, sixth, ninth, and twelfth month of the taxpayer's taxable year. Authorizes the department of state revenue to establish implementation procedures.

Effective: July 1, 2005.

Ayres, Hinkle, Aguilera

January 25, 2005, read first time and referred to Committee on Ways and Means.

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First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

HOUSE BILL No. 1837

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 6-2.3-3-10 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. **(a) Subject to**
3 **subsection (b)**, gross receipts include receipts received for installation,
4 maintenance, repair, equipment, or leasing services provided to a
5 commercial or domestic consumer that are directly related to the
6 delivery of utility services to the commercial or domestic consumer or
7 the removal of equipment from a commercial or domestic consumer
8 upon the termination of service.

9 **(b) Gross receipts do not include any of the following:**

10 **(1) Shutoff fees.**

11 **(2) Reconnect fees.**

12 **(3) Hydrant rental fees paid by a water utility customer.**

13 SECTION 2. IC 6-2.3-4-6 IS ADDED TO THE INDIANA CODE
14 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2005]: Sec. 6. **Gross receipts derived from any of the following**
16 **are exempt from the utility receipts tax:**

17 **(1) Penalties.**



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(2) Fees described in IC 6-2.3-3-10(b).

SECTION 3. IC 6-2.3-4-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 7. Gross receipts derived from the collection or disposal of solid waste other than:**

(1) sludge from a waste treatment plant, a water supply treatment plant, or an air pollution control facility; or

(2) commercial, industrial, mining, and institutional wastes; are exempt from the utility receipts tax.

SECTION 4. IC 6-2.3-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Except as provided in subsections (c) through (e), a taxpayer shall:

(1) file quarterly utility receipts tax returns with; and

(2) pay the taxpayer's utility receipts tax liability on the taxable gross receipts received by the taxpayer in the immediately preceding reporting period to;

the department by the due date of the ~~estimated~~ **quarterly** return. **A reporting period is the three (3) months preceding the month in which a quarterly utility receipts tax return is due.** A taxpayer who uses a taxable year that ends on December 31 shall file the taxpayer's ~~estimated~~ **quarterly** utility receipts tax returns and pay the tax to the department ~~on or before April 20; June 20; September 20; and December 20~~ **not later than twenty (20) days after the end of the third, sixth, ninth, and twelfth month of the taxpayer's taxable year.** If a taxpayer uses a taxable year which does not end on December 31, the due dates for filing estimated utility receipts tax returns and paying the tax are on or before the twentieth day of the fourth, sixth, ninth, and twelfth months of the taxpayer's taxable year.

(b) With each return filed, with each payment by cashier's check, certified check, or money order delivered in person or by overnight courier, and with each electronic funds transfer made, a taxpayer shall pay to the department ~~twenty-five percent (25%) of the estimated or the exact~~ amount of utility receipts tax that is due **on the receipts received by the taxpayer in the reporting period for which the return is filed.**

(c) If a taxpayer's ~~estimated~~ annual utility receipts tax liability **for the preceding taxable year as determined by the department** does not exceed one thousand dollars (\$1,000), the taxpayer is not required to file ~~an estimated~~ **a quarterly** utility receipts tax return **in the immediately following taxable year.**

(d) If the department determines that a taxpayer's:

(1) estimated quarterly utility receipts tax liability for the current

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year; or

(2) average ~~estimated~~ quarterly utility receipts tax liability for the preceding year;

exceeds ten thousand dollars (\$10,000), the taxpayer shall pay the ~~estimated~~ **quarterly** utility receipts taxes due by electronic funds transfer (as defined in IC 4-8.1-2-7) or by delivering in person or by overnight courier a payment by cashier's check, certified check, or money order to the department. The transfer or payment shall be made on or before the date the tax is due.

(e) If a taxpayer's utility receipts tax payment is made by electronic funds transfer, the taxpayer is not required to file ~~an estimated a~~ **quarterly** utility receipts tax return.

(f) The penalty prescribed by IC 6-8.1-10-2.1(b) shall be assessed by the department on taxpayers failing to make payments as required in subsection (b) or (d). ~~However, a penalty may not be assessed as to any estimated payments of utility receipts tax that equal or exceed:~~

(1) twenty percent (20%) of the final tax liability for the taxable year; or

(2) twenty-five percent (25%) of the final tax liability for the taxpayer's previous taxable year.

In addition, the penalty as to any underpayment of tax on an estimated return shall be assessed only on the difference between the actual amount paid by the taxpayer on the estimated return and twenty-five percent (25%) of the taxpayers's final utility receipts tax liability for the taxable year.

SECTION 5. IC 6-2.5-4-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A person is a retail merchant making a retail transaction when the person rents or furnishes rooms, lodgings, or other accommodations, such as booths, display spaces, banquet facilities, and cubicles or spaces used for adult relaxation, massage, modeling, dancing, or other entertainment to another person:

(1) if those rooms, lodgings, or accommodations are rented or furnished for periods of less than thirty (30) days; and

(2) if the rooms, lodgings, and accommodations are located in a hotel, motel, inn, tourist camp, tourist cabin, gymnasium, hall, coliseum, or other place, where rooms, lodgings, or accommodations are regularly furnished for consideration.

(b) Each rental or furnishing by a retail merchant under subsection (a) is a separate unitary transaction regardless of whether consideration is paid to an independent contractor or directly to the retail merchant.

(c) For purposes of this section, "consideration" includes a

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membership fee charged to a customer.

(d) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction if:

(1) the person is a promoter that rents a booth or display space to an exhibitor; and

(2) the booth or display space is located in a facility that:

(A) is described in subsection (a)(2); and

(B) is operated by a political subdivision (including a capital improvement board established under IC 36-10-8 or IC 36-10-9) or the state fair commission.

This subsection does not exempt from the state gross retail tax the renting of accommodations by a political subdivision or the state fair commission to a promoter or an exhibitor.

(e) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person rents or leases a shelter house that:

(1) is unattached to any other building or structure;

(2) does not include plumbing, heating, or kitchen facilities, other than a wood fireplace or fire pit;

(3) has an area of less than two thousand five hundred (2,500) square feet;

(4) is rented for a period of less than five (5) consecutive days; and

(5) is not rented or leased in any part:

(A) for overnight lodging;

(B) for overnight storage;

(C) as a booth;

(D) as a display space; or

(E) as a cubicle or space used for adult relaxation, massage, modeling, or dancing.

SECTION 6. IC 6-2.5-4-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) As used in this section, a "power subsidiary" means a corporation which is owned or controlled by one (1) or more public utilities that furnish or sell electrical energy, natural or artificial gas, water, steam, or steam heat and which produces power exclusively for the use of those public utilities.

(b) A power subsidiary or a person engaged as a public utility is a retail merchant making a retail transaction when the subsidiary or person furnishes or sells electrical energy, natural or artificial gas, water, steam, or steam heating service to a person for commercial or domestic consumption.

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(c) Notwithstanding subsection (b), a power subsidiary or a person engaged as a public utility is not a retail merchant making a retail transaction in any of the following transactions:

(1) The power subsidiary or person provides, installs, constructs, services, or removes tangible personal property which is used in connection with the furnishing of the services or commodities listed in subsection (b).

(2) The power subsidiary or person sells the services or commodities listed in subsection (b) to another public utility or power subsidiary described in this section or a person described in section 6 of this chapter.

(3) The power subsidiary or person sells the services or commodities listed in subsection (b) to a person for use in manufacturing, mining, production, refining, oil extraction, mineral extraction, irrigation, agriculture, or horticulture. However, this exclusion for sales of the services and commodities only applies if the services are consumed as an essential and integral part of an integrated process that produces tangible personal property and those sales are separately metered for the excepted uses listed in this subdivision, or if those sales are not separately metered but are predominately used by the purchaser for the excepted uses listed in this subdivision.

(4) The power subsidiary or person sells the services or commodities listed in subsection (b) and all the following conditions are satisfied:

(A) The services or commodities are sold to a business that after June 30, 2004:

(i) relocates all or part of its operations to a facility; or

(ii) expands all or part of its operations in a facility;

located in a military base (as defined in IC 36-7-30-1(c)), a military base reuse area established under IC 36-7-30, an economic development area established under IC 36-7-14.5-12.5, or a military base recovery site designated under IC 6-3.1-11.5.

(B) The business uses the services or commodities in the facility described in clause (A) not later than five (5) years after the operations that are relocated to the facility or expanded in the facility commence.

(C) The sales of the services or commodities are separately metered for use by the relocated or expanded operations.

However, this subdivision does not apply to a business that substantially reduces or ceases its operations at another location

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in Indiana in order to relocate its operations in an area described in this subdivision, unless the department determines that the business had existing operations in the area described in this subdivision and that the operations relocated to the area are an expansion of the business's operations in the area.

(5) The power subsidiary or person leases or rents a hydrant or hydrant connection in the furnishing of the services or commodities described in subsection (b), and the fee for the lease or rental is separately stated on the invoice, bill of sale, or similar document given to the customer.

SECTION 7. IC 6-2.5-4-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) A person, other than a public utility, is a retail merchant making a retail transaction when ~~he~~ **the person** rents or leases tangible personal property to another person other than for subrent or sublease.

(b) A person is a retail merchant making a retail transaction when the person sells any tangible personal property which has been rented or leased in the regular course of the person's rental or leasing business.

(c) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person rents or leases motion picture film, audio tape, or video tape to another person. However, this exclusion only applies if:

(1) the person who pays to rent or lease the film charges admission to those who view the film; or

(2) the person who pays to rent or lease the film or tape broadcasts the film or tape for home viewing or listening.

(d) Notwithstanding subsection (a), a person is not a retail merchant making a retail transaction when the person rents or leases a golf cart for sport or recreational purposes for a period of less than seven (7) consecutive days.

SECTION 8. IC 6-2.5-5-39 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 39. Transactions that are exempt from the state gross retail tax include transactions exempted from the gross retail tax under any of the following:**

(1) IC 6-2.5-4-4.

(2) IC 6-2.5-4-5.

(3) IC 6-2.5-4-10.

SECTION 9. [EFFECTIVE JULY 1, 2005] (a) **The definitions in IC 6-2.3 and IC 6-2.5 apply throughout this SECTION.**

(b) **IC 6-2.3-4-6 and IC 6-2.3-4-7, both as added by this act, and IC 6-2.3-3-10, as amended by this act, apply only to gross receipts**

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received from original statements and billings dated after June 30, 2005. IC 6-2.3-6-1, as amended by this act, applies to returns and payments that are due under IC 6-2.3-6-1, as amended by this act, after June 30, 2005.

(c) For purposes of:

- (1) IC 6-2.5-4-4, as amended by this act;
- (2) IC 6-2.5-4-5, as amended by this act;
- (3) IC 6-2.5-4-10, as amended by this act; and
- (4) IC 6-2.5-5-39, as added by this act;

all transactions, except the furnishing of public utility services and commodities by retail merchants described in IC 6-2.5-4-5, as amended by this act, shall be considered as having occurred after June 30, 2005, to the extent that delivery of the property or services constituting selling at retail is made after that date to the purchaser or to the place of delivery designated by the purchaser. However, a transaction shall be considered as having occurred before July 1, 2005, to the extent that the agreement of the parties to the transaction was entered into before July 1, 2005, and payment for the property or services furnished in the transaction is made before July 1, 2005, notwithstanding the delivery of the property or services after June 30, 2005.

(d) With respect to a transaction constituting the furnishing of public services and commodities by retail merchants described in IC 6-2.5-4-5, as amended by this act, only transactions for which the charges are collected upon original statements and billings dated after July 31, 2005, shall be considered as having occurred after June 30, 2005.

(e) The department of state revenue may adopt temporary rules in the manner provided for the adoption of emergency rules under IC 4-22-2-37.1 to implement IC 6-2.3-6-1, as amended by this act. A temporary rule adopted under this SECTION may provide for a reconciliation of estimated payments made before July 1, 2005, under IC 6-2.3-6-1, as it existed before the amendment made by this act, with the amounts due after June 30, 2005, under IC 6-2.3-6-1, as amended by this act. An act or omission related to a payment, a return, or information in a return that is required in a temporary rule adopted under this SECTION is subject to the same penalties that apply to an act or omission related to a payment, a return, or information in a return that is required under IC 6-2.3-6-1, as amended by this act. A temporary rule adopted under this SECTION expires on the earliest of the following:

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- 1 **(1) The date specified in the temporary rule.**
- 2 **(2) The date the temporary rule is repealed or otherwise**
- 3 **superseded by another temporary rule adopted under this**
- 4 **SECTION.**
- 5 **(3) The date the temporary rule is repealed or otherwise**
- 6 **superseded by a rule adopted under IC 4-22-2.**
- 7 **(4) December 31, 2006.**

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